

REMARKS

Claims 1, 32, 36, 37 and 39 have been amended to overcome formal objections raised by the Examiner. Claims 17 and 42 have been amended to correct a minor spelling informality. Such amendments to claims are only for the purpose of expediting the prosecution of this application and are not to be construed as an abandonment of any of the novel concepts disclosed therein.

1. The traverse of the requirement for restriction is said to be on the grounds that the restriction is proper only if the inventions are independent and distinct. This is said to be not found persuasive because it is said the inventions are distinct if it can be shown that either the process as claimed can be practiced by another materially different process or by hand, or the apparatus as claimed can be used to practice another and materially different process. The Examiner appears to overlook that the statute reads "two or more independent and distinct inventions," not "two or more independent or distinct inventions." The Examiner must show both independence and distinctness in order to support maintaining a requirement for restriction.

Furthermore, the Examiner has not even mentioned the requirement of M.P.E.P. 803 set forth on pages 2-4 of our response directing, "If the search and examination of an entire application **can** be made without serious burden, the Examiner must examine it **on** the merits, even though it includes claims to distinct and independent inventions."

Accordingly, withdrawal of the requirement for restriction and examination of claims 22-31 on the merits is respectfully requested. If the requirement is repeated, the Examiner is respectfully requested to show why it is proper to treat the conjunction "and" in the statute as "or" and why it involves serious burden to examine claims 22-31 in this application when we have shown there is no serious burden.

2, 3. Claims 1-21 and 32-42 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Regarding claims 1, 32, 36 and 39, the phrase "such as" is said to render the claims indefinite. These claims have been amended to delete this phrase.

Claim 37 is said to recite the limitations the housing in line 1 and the cylindrical wall in line 2, and there is said to be insufficient antecedent basis for these limitations in the claim.

Claim 37 has been amended to depend upon claim 36. Accordingly, withdrawal of the rejection of claims 1-21 and 32-42 as indefinite is respectfully requested.

4, 5. Claims 1-21 and 32-42 stand rejected under 35 U.S.C. 102(a) as being unpatentable based upon the printed publication "Solar Dried Coffee Technology" found on the website www.sunutility.com which is said to describe the invention in this country before the invention thereof by the Applicant for a patent, quoting four paragraphs from the website. This ground of rejection is respectfully traversed.

"It is well settled that anticipation under 35 U.S.C. 102 requires the presence in a single reference of all of the elements of a claimed invention." *Ex parte Chopra*, 229 U.S.P.Q. 230, 231 (BPA&I 1985) and cases cited.

"Anticipation requires the presence in a single prior art disclosure of all elements of a claimed invention arranged as in the claim." *Connell v. Sears, Roebuck & Co.*, 220 U.S.P.Q. 193, 198 (Fed. Cir. 1983).

"This court has repeatedly stated that the defense of lack of novelty (i.e., 'anticipation') can only be established by a single prior art reference which discloses each and every element of the claimed invention." *Structural Rubber Prod. Co. v. Park Rubber Co.*, 223 U.S.P.Q. 1264, 1270 (Fed. Cir. 1984), citing five prior Federal Circuit decisions since 1983 including *Connell*.

In a later analogous case the Court of Appeals for the Federal Circuit again applied this rule in reversing a denial of a motion for judgment n.o.v. after a jury finding that claims were anticipated. *Jamesbury Corp. v. Litton Industrial Prod., Inc.*, 225 U.S.P.Q. 253 (Fed. Cir. 1985).

After quoting from *Connell*, "Anticipation requires the presence in a single prior art disclosure of all elements of a claimed invention arranged as in the claim," 225 U.S.P.Q. at 256, the court observed that the patentee accomplished a constant tight contact in a ball valve by a lip on the seal or ring which interferes with the placement of the ball. The lip protruded into the area where the ball will be placed and was thus deflected after the ball was assembled into the valve. Because of this constant pressure, the patented valve was described as providing a particularly good seal when regulating a low pressure stream. The court quoted with approval from a 1967 Court of Claims decision adopting the opinion of then Commissioner and later Judge Donald E. Lane:

[T]he term "engaging the ball" recited in claims 7 and 8 means that the lip contacts the ball with sufficient force to provide a fluid tight seal. *** The Saunders flange or lip only sealingly engages the ball 1 on the upstream side when the fluid pressure forces the lip against the ball and never sealingly engages the ball on the downstream side because there is no fluid pressure there to force the lip against the ball. The Saunders sealing ring provides a compression type of seal which depends upon the ball pressing into the material of the ring. *** The seal of Saunders depends primarily on the contact between the ball and the body of the sealing ring, and the flange or lip sealingly contacts the ball on the upstream side when the fluid pressure increases. 225 U.S.P.Q. at 258.

Relying on *Jamesbury*, the ITC said, "Anticipation requires looking at a reference, and comparing the disclosure of the reference with the claims of the patent in suit. A claimed device is anticipated if a single prior art reference discloses all the elements of the claimed invention as arranged in the claim." *In re Certain Floppy Disk Drives and Components Thereof*, 227 U.S.P.Q. 982, 985 (U.S. ITC 1985).

"A reference is only good for what it clearly and definitely discloses." *In re Hughes*, 145 U.S.P.Q. 467, 471 (C.C.P.A. 1965); *In re Moreton*, 129 U.S.P.Q. 227, 230 (C.C.P.A. 1961).

"The prior art reference must be enabling, thus placing the allegedly disclosed matter in the possession of the public." *Akzo N.V. v. U.S. Int'l Trade Comm'n*, 1 U.S.P.Q. 2d 1241, 1245 (Fed. Cir. 1986).

The reference does not disclose each and every element in the rejected claims arranged as in the rejected claims. Furthermore, the reference only discloses what the system does, and does not disclose to one skilled in the art how to make the claimed invention work. Accordingly, withdrawal of the rejection of claims 1-21 and 32-42 as anticipated by the reference is respectfully requested. If this ground of rejection is repeated, the Examiner is respectfully requested to associate each element in each rejected claim with corresponding elements in the reference, quote verbatim the language in the reference regarded as corresponding to each claim element and quote verbatim the language in the reference regarded as a written description disclosing the manner and process of making and using the claimed invention in such full, clear, concise and exact terms as to enable any person skilled in the food product drying art to make and use the claimed invention.

6. Claims 1-21 and 32-42 stand rejected under 35 U.S.C. 102(b) as being unpatentable based upon the printed publications "Solar/Biomass Coffee Drying Systems" and "Café SolarTM" said to describe the invention in this country more than one year prior to the date of application for patent in the United States. This ground of rejection is respectfully traversed. Like the website reference, these publications do not disclose each and every element in the claims arranged as in the claims, nor are these references enabling. Accordingly, withdrawal of the rejection of claims 1-21 and 32-42 as anticipated by these publications is respectfully requested. If these grounds of rejection are repeated, the Examiner is respectfully requested to associate each element in each rejected claim with corresponding elements in the references, quote verbatim the language in the references regarded as corresponding to a corresponding element in a rejected claim and quote verbatim the language in each reference regarded as a written description disclosing the manner and process of making and using the invention of each rejected claim, in such full, clear, concise, and exact terms as to enable any person skilled in the food product drying art to make and use the invention of each claim.

7. The courtesy of the Examiner in making a diligent search is acknowledged with appreciation. The references cited, but not applied, are submitted to be incapable of anticipating, suggesting or **making** obvious the subject matter as a whole of the invention disclosed and claimed in this application.

In view of the foregoing amendments, authorities, remarks and the inability of the prior art, alone or in combination, to anticipate, suggest or make obvious the subject matter as a whole of the invention disclosed and claimed in this application, all of the claims are submitted to be in a condition for allowance, and notice thereof is respectfully requested. Should the Examiner believe this application is not in a condition for allowance, the Examiner is respectfully requested to telephone the undersigned attorney at (617) 521-7014 to discuss what steps the Examiner believes would place the application in a condition for allowance. Filed herewith is a

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Respectfully submitted,

FISH & RICHARDSON P.C.

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